

SCAN

1 Earl C. Bogans #17382-112  
 2 1299 Seaside Avenue  
 3 Terminal Island, CA 90731  
 4 Movant in pro se.

*Denied*  
*18 USC § 3582(c) 2*  
*does not provide jurisdiction*  
*in this court to grant*  
*movants request*

FILED  
 CLERK, U.S. DISTRICT COURT

FEB - 8 2008

IN THE UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

CENTRAL DISTRICT OF CALIFORNIA  
 BY

PROVIDED STATES OF AMERICA,

Case No. [REDACTED]

Plaintiff/Respondent

CR 99-1099-R

Vs

18 U.S.C. & Section 3582(c)2  
 Motion for reduction.

Earl C. Bogans

**AND ORDER DENYING MOTION**

Defendant/Movant

Comes now the Movant, Earl C. Bogans, proceeding Pro Se, unlearned and unskilled in the law, indigent and incarcerated, and moves this court to give order for reduction of sentence pursuant to 18 U.S.C. & Section 3582(c)2, under Amendment 599, an explicitly retroactive amendment.

I.

FACTS

On April 24, 2000, at sentencing defendant was given a mandatory consecutive sentence under 924(c) and a two level weapon enhancement for a carjack. Defendants attorney appealed the two level weapon enhancement under the preponderance of evidence standard violation. The Ninth Circuit Court remanded the case back to the district court. On February 4, 2002 the district court denied relief. Defendants attorney did not appeal the district court's decision. As a result of his failure to appeal, defendant filed an ineffective assistance of counsel motion under 28 U.S.C. 2255, which was denied by the district court.

II

ARGUMENT

A. District Court should withdraw the two level enhancement under Amendment 599.

1 Defendant moves this court to order reduction of sentence under  
2 Amendment 599, which was not in effect at the time defendant's  
3 appeal was in progress. Effective November 1, 2000, the senten-  
4 cing commission adopted Amendment 599, an explicitly retroactive  
5 amendment that modified the guidelines applicable to 924(c) of-  
6 fenses, U.S. Sentencing Guidelines Manual 2K2.4. The amendment  
7 note states:

8 "If a sentence under this guideline is imposed in conjunct-  
9 tion with a sentence for an underlying offense, do not ap-  
10 ply any specific offense characteristics for possession,  
11 brandishing, use or discharge of an explosive or firearm  
12 when determining the sentence for underlying offense. A sen-  
13 tence under this guideline accounts for any explosive or  
14 weapon enhancement for the underlying conviction..."

15 In the case of the defendant, he was attributed the two level  
16 weapon enhancement for a carjack by the pre-sentencing report  
17 (PSR). There was no testimony in court that defendant possessed,  
18 brandished, used or discharged a weapon in that case. Under amen-  
19 dment 599, defendant is entitled to a two level reduction of his  
20 sentence because the firearm originally used to enhance defen-  
21 dant's sentence had also been a part of the offense that contri-  
22 buted to defendant's 924(c) conviction.

23 Under 18 U.S.C. & Section 3528(c)2, a district court can resen-  
24 tence a defendant whose sentence range has been lowered by the  
25 Sentencing Guideline Commission pursuant to 28 U.S.C. Section  
26 944(o). This allows the court to re-evaluate the defendant's sen-  
27 tencing range using the newly reduced Guidelines, and then deter-  
28 mine an appropriate sentence. Defendant is asking the district  
court to reconsider his sentence pursuant to 3582(c)(2) and the  
defendant is asking the district court to have discretion to im-  
pose a non-guideline sentence under Booker, case law U.S. vs Hicks  
F3d 472 (9th cir 2007).

### III

### CONCLUSION

25 For all the reasons stated herein above, I ask the court to grant  
26 Bogans' 3582(c)(2) Motion for Reduction of Sentence of the sub-  
27 ject matter.

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4  
5 Respectfully submitted this 4 day of Feb. 2008  
6 Terminal Island California.  
7

8 **AFFIRMATION**

9 I, Earl C. Bogans, do hereby affirm that all statements  
10 made in the attached Motion for Reduction of Sentence,  
11 are true, correct, complete and not misleading...so help  
12 me God.  
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Earl C. Bogans  
Earl C. Bogans